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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,584	12/12/2003	Erich J. Schlosser	WEB-954-US	1733
	7590 11/21/2006		EXAMINER COCKS, JOSIAH C	
Daniel A. Tallitsch BAKER & McKENZIE LLP 130 E. Randolph Drive Chicago, IL 60601			ART UNIT 3749	PAPER NUMBER

DATE MAILED: 11/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/735,584

Applicant(s)

SCHLOSSER ET AL.

Examiner

Josiah Cocks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

1. Receipt of applicant's amendment filed 8/18/2006 is acknowledged.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,158,330 to Andress ("Andress") in view of U.S. Patent No. 2,253,834 to Volks ("Volks").

Andress discloses in the specification and Figs. 1-3 an invention in the same field of endeavor as applicant's invention and similar to that described in applicant's claims 1-31. In particular, Andress shows a removable cooking grid/grate for a barbecue grill that includes a cooking surface made of upper surface (12) of a plurality of cooking members (17) and a lower surface (14) that includes a solid energy receptor portion (troughs 13, see Fig. 3) having a thickness that extends a distance below the cooking surface. The cooking members of the upper surface are considered to be depending from the solid energy receptor portion. Pluralities of openings (16) are arranged between the cooking members and no openings extend through the solid energy receptor portion (note Fig. 3. showing no openings in the troughs 13). Andress further shows that an upper sloped grease control structure configured on the upper surface of the receptor portion (note slope of sides of members 17) and a lower grease control portion that includes an apex located below the cooking surface (see apexes formed between troughs 18, Fig. 2a).

In regard to claims 2, 10, and 16-20, the cooking grate of Andress clearly has a mass notes that the type of material employed or amount of material has an effect on the weight of the grate (see col. 2, lines 35-39). Further, Andress suggests that the size and shape of the openings are variable (see col. 1, lines 39-41 and col. 2, lines 30-32). To have adjusted the mass distribution of the grate or the size of the openings would be simply a matter of optimizing the mass of the grate and slot sizes of Andress as desired through routine experimentation and are not regarded to patentably distinguish applicant's invention. See MPEP 2144.04(II)(A).

Andress clearly teaches that the cooking grate is included in a barbecue grill assembly that has a cooking chamber and a heating source underneath the grate (see col. 1, lines 12-15) but

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does not expressly provide that the heating source is a gas burner and that the cooking grate is adjacent the gas burner such that no structure is located between the gas burner and the solid energy receptor portion of the cooking grate.

Volks teaches a barbecue grill assembly with a cooking grate in the same field of endeavor as both applicant's invention and Andress. In Volks, the barbecue grill expressly includes a gas burner (any or all of 10) within a cooking chamber. The cooking grate (31) of Volks is of similar construction and arrangement to that of Andress and is shown provided adjacent the gas burners such that no structure is between the cooking grate and gas burners (see Fig. 4).

Therefore, in regard to claims 1-31, it would have been obvious to a person of ordinary skill in the art at the time the invention was made that the heat source provided underneath the cooking grate of Andress would be a gas burner arranged adjacent the cooking grate as taught in Volks in order to enable flames from the gas burner to impinge on the cooking grid in order to provide heat to the food cooked thereon while also providing that any grease dripping from the grid is directed to appropriate without dropping on the burner to thereby minimize smoking and unpleasant smells (see Volks, page 2, col. 1, lines 1-19 and col. 1, line 72 through col. 2, line 4).

### *Response to Arguments*

5. Applicant's arguments filed 8/18/2006 have been fully considered but they are not persuasive. Applicant appears to argue that the prior art relied upon by the examiner does not suggest a receptor portion "directly above" the gas burner. The examiner does not agree.

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As noted above, Andress expressly provides that the heating source is arranged “underneath” the cooking grate/grid (see Andress, col. 1, lines 12-15). Applicant does not appear to comment on this plain teaching of Andress. Further, the examiner has admitted that Andress does not expressly provide that the heating source is a gas burner. However, the remedy this deficiency, the examiner has turned to Volks. As shown particularly in Fig. 4 of Volks, the heating source in such a cooking device is a gas burner in the form of gas burner pipes (10). These gas burner pipes are clearly and unambiguously arranged beneath an energy receiving portion (31) such that energy receiving portion is “directly above” the gas burner in precisely the same manner both claimed and disclosed by applicant (see Fig. 4). Again, applicant does not appear to comment on this plain and unambiguous disclosure of a gas burner and above located cooking grate as shown in Volks.

Therefore, the evidence of record clearly establishes that a cooking grate, as disclosed in either Andress and Volks, is arranged directly above the heating source, where such a heating source is understood in the art to be a gas burner (see 10 of Volks). Accordingly, applicant’s arguments to the contrary are not persuasive. Applicant’s claims 1-31 do not patentably distinguish applicant’s invention over the prior art of record.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO


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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on M-F 8:00-5:30.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jcc  
November 6, 2006

  
JOSIAH COCKS  
PRIMARY EXAMINER  
ART UNIT 3749